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# United States Court of Appeals

## For the Fourth Circuit

No. 7552

ROSALIND SLADE,
*Appellant,*

v.

SCHOOL BOARD OF HARFORD COUNTY,
*Appellee.*

## BRIEF AND APPENDIX FOR APPELLANT

FILED
DEC 4 - 1957
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THURGOOD MARSHALL,
107 West 43rd Street,
New York, N. Y.,

TUCKER R. DEARING,
627 Aisquith Street,
Baltimore, Md.,

JUANITA J. MITCHELL,
1239 Druid Hill Avenue,
Baltimore, Md.,

ROBERT B. WATTS,
1520 E. Monument Street,
Baltimore, Md.,

JACK GREENBERG,
107 West 43rd Street,
New York, N. Y.,
*Counsel for Appellant.*

IRMA ROBBINS FEDER,
*of Counsel.*

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## Question Presented

Whether appellants were denied rights secured by the Fourteenth Amendment when the court below permitted appellees' school system to defer desegregation of certain schools and grades for one to three years and prolong high school desegregation until 1963 on a "stair step" basis (except for Negro students who might be admitted immediately upon passage of special examinations) where appellees did not sustain the burden of demonstrating the necessity for such delay?

## Statement

This cause commenced with an earlier (separate) action. See 146 F. Supp. 91, brought on behalf of some of the appellants here to desegregate the schools in Harford County. Two da s before that cause came to trial appellees adopted a resolution stating that

> "any child regardless of race may make individual application to the Board of Education to be admitted to a school other than the one attended by such child, and the admissions to be granted by the Board of Education in accordance with such rules and regulations as it may adopt and in accordance with the available facilities in such schools, effective for the school year beginning September, 1956." 146 F. Supp. at p. 93.

Counsel for the Board asserted that "Since that plan embraces the relief prayed for, I think that takes care of that . . ." *Id.* at p. 94. Relying on the Resolution, appellants agreed to dismiss the action, and believed the controversy concluded. *Ibid.* (The court concurred in their interpretation and later, in a fresh suit (the instant one) to require desegregation of the county's schools, wrote that "plaintiffs were justified in believing, as I did, that applications for transfer would be considered without regard to the race of the applicant." 152 F. Supp. at p. 119. The Court therefore held appellees estopped to prevent admission without regard to race of individual named plaintiffs in the first suit. *Id.* at 119-120. The estoppel phase of the suit is not at issue here and is set forth as background.)

On June 6, 1956 the Board announced its "Transfer Policy." It reserved "the right during the period of transition to delay or deny the admission of a pupil to any school, if it deems such action wise and necessary for any good and sufficient reason." 146 F. Supp. at p. 94.

On August 1, 1956 it adopted a "Desegregation Policy." Citing studies which allegedly indicated "lowering of

school standards" upon desegregation and experience of other areas with "bitter local opposition" which prevents "orderly transition . . . and also adversely affects the whole educational program." 146 F. Supp at p. 95, the Board announced that it would only permit Negro applicants for transfer to attend the first three grades of two elementary schools in the county. *Id.* at p. 95. The reason for selection of these schools was that they were, with some slight exception, allegedly "the only elementary buildings in which space is available for additional pupils at the present time." The Board relied, too, on "[s]ocial problems posed by the desegregation of schools. . . ." These, it opined "can be solved with the least emotionalism when younger children are involved. The future rate of expansion of this program," it concluded "depends upon the success of these initial steps." *Ibid.*

Altogether sixty Negro children had applied for transfer under the impression that no racial distinctions were to be made. There were, at the time, about 1,400 Negro and 12,600 white children in the school population. Of the sixty applicants fifteen were admitted and forty-five rejected pursuant to the "Desegregation Policy" (App. pp. 26a-27a).

Appellants, therefore, on August 28, 1956, filed a fresh suit alleging that defendants were under constitutional duty to desegregate completely and that they were estopped from retreating from their original resolution. (The Court found an estoppel as to named plaintiffs, but held that the County policy, generally, could not be fixed by estoppel. Applicants here urge only their constitutional position.) The trial court remitted appellants to an administrative remedy before the State Board of Education.

The appellants (including intervenors who were granted leave to intervene, 152 F. Supp. at p. 115) filed an appeal with the State Board. While it was pending appellees

changed their policy once more on February 6, 1957. The new policy provided that:

> Applications for transfer will be accepted from pupils who wish to attend elementary schools in the areas where they live, if space is available in such schools. Space will be considered available in schools that were not more than 10% overcrowded as of February 1, 1957. All capacities are based on the state and national standard of thirty pupils per classroom. 152 F. Supp. at p. 116.

Under the then newest plain five elementary schools and the sixth grade in two schools were opened. *Ibid.*

The State Board held that the plan had been adopted in good faith and constituted a reasonable start. *Ibid.*

At a hearing of this cause on April 18, 1957 the plan of February 6 was amplified to include ten elementary schools and the sixth grade in one school; as well as three elementary schools as of September 1958, when contemplated construction was projected to be completed. Three elementary schools and the sixth grade of a high school would commence receiving Negroes' applications in September 1959.

As a normal result of the plan, the Board observed, sixth grade graduates would have been "admitted to junior high schools for the first time in September, 1958 and would proceed through high schools in the next higher grade each year. This will completely desegregate all schools of Harford County by September, 1963." 152 F. Supp. at p. 117.

At the April, 1957 hearing, the Court ruled tentatively that the plan was "generally satisfactory for the elementary grades but not for the high school grades." *Ibid.*

Another hearing was scheduled for June 11, 1957. On June 5th, the Board changed its plan once more and notified the parties of the change just before the hearing. (App. p. 39a). The new plan—consisting of additions to

the old—would permit Negro children to enter high school by a route additional to that of the earlier plan (whereby they could enter only through normal promotions from desegregated elementary schools). It would permit Negro children to take special examinations and be specially evaluated for admission to nonsegregated high schools, 152 F. Supp. at 117; white children, and Negro children entering via the high school plan designed to evolve during 1958-1963, would not be required to take these tests. Under the revised plan complete desegregation of the seventh grade, however, was still deferred until September, 1958. 152 F. Supp. at 119.

The reason given for the scheme of desegregating the high schools over a period of four years in conjunction with the right of specially qualified Negro applicants to enter starting immediately, as summarized by the Court, was:

> . . . when a child transfers to a high school from another high school he faces certain problems which do not arise when he enters the seventh grade, which is the lowest grade in the Harford County high schools. After a year or so in the high schools social groups, athletic groups and subject-interest groups have begun to crystallize, friendships and attachments have been made, cliques have begun to develop. A child transferring to the school from another high school does not have the support of a group which whom he has passed through elementary school. A Negro child transferring to an upper grade at this time would not have the benefit of older brothers, sisters or cousins already in the school, or parents, relatives or friends who have been active in the P. T. A. High school teachers generally, with notable exceptions, are less 'pupil conscious' and more 'subject conscious' than teachers trained for elementary grades, and because each teacher has the class for only one or two subjects, are less likely to help in the readjustment. 152 F. Supp. at p. 118.

The pertinent parts of the plan of the school board, viewed as a whole, as of the last hearing, and as embodied

in the Court's order from which plaintiffs appeal, are now as follows:

> 1. Defendants now and hereafter shall accept applications for admission or transfer to all elementary classes under their control (except in the schools named in paragraph 2 as to which applications will be accepted as described in that paragraph), in accordance with rules and regulations set forth in paragraph 3 and every Negro child's application to classes governed by the instant paragraph shall be considered and granted on the basis upon which it would be considered and granted if he were white.
>
> 2. Defendants shall accept Negro children's applications for admission or transfer to Old Post Road, Bel Air and Highland elementary schools for the school year 1958-1959 and thereafter; and shall accept Negro children's applications for admission or transfer to Forest Hill, Jarrettsville and Dublin elementary schools and the sixth grade at Edgewood High School for the school year 1959-1960 and thereafter. Every Negro child's application to the schools named in this paragraph for the respective school years specified herein and thereafter shall be considered and granted on the basis upon which it would be considered and granted if he were white.
>
> 3. All applications for transfer to elementary classes shall be made during the month of May on a regular application form furnished by the Board of Education and must be approved by the applicant's classroom teacher and the principal of the school the applicant attends. Such applications will be reviewed at the regular June meeting of the Board of Education. Applicants and their parents will be informed of the action taken on applications prior to the close of school in June of each year. In no event shall a Negro child's application for admission or transfer be rejected if it would have been granted had he been white.
>
> 4. A Negro child's application for admission or transfer to seventh grade classes commencing Sep-

tember, 1958, and thereafter, under defendant's control shall be considered and granted on the basis upon which it would be considered and granted if he were white. Such applications to the following classes shall be so treated during and after the year set forth alongside the class, as follows:

| | |
|---|---|
| eighth grade | — 1959 |
| ninth grade | — 1960 |
| tenth grade | — 1961 |
| eleventh grade | — 1962 |
| twelfth grade | — 1963 |

In 1963 and therafter all Negro applicants to all classes shall be admitted on the same basis upon which they would be admitted if they were white.

5. Commencing September, 1957 applications for admission or transfer by Negro children not qualified for admission or transfer under paragraph 4 to high schools under defendants' control will be considered and granted if the applicants fulfill special qualifications pertaining to the probability of success of each individual pupil. These qualifications will be measured by intelligence and achievement tests, grade level achievements and other similar matters to be adjudged by a committee consisting of the principals of the schools from which the pupil is transferring and the school to which he desires to transfer, the Director of Instruction and the county supervisors working in these schools. Apart from the fact that these conditions may be applied only to Negro students not qualified for admission under paragraph 4 no racial distinction is to be made in the administration of these tests and evaluations. Such applications may be made to the Board of Education between July 1 and July 14 of 1957 and years following in which these tests may be given.

• • •

7. No racial distinctions whatsoever shall be made by defendants in treating Negro children who have been admitted to schools pursuant to this decree. (App. 1a-3a)

• • •

The record reveals that problems of overcrowding, pupil adjustment, etc., would not stand in the way of free transfer for white children who had never attended the Harford County schools before and who moved into the county:

> "Q. (By Mr. Greenberg) If white persons moved from Delaware or Virginia or elsewhere, moved into Harford County, that is at the present time, such as to work in an industrial plant, would their children be admitted to the schools at the present time?
>
> A. (By Mr. Willis, Superintendent of Schools) Yes, sir, they would." (App. p. 29a)

See also App. 28a.

Moreover, whatever may be said of overcrowding it was not so severe that the Subcommittee on Facilities of appellees' Citizens Consultant Committee on Integration could not conclude: "the committee is of the opinion that provision can be made to accommodate such colored students as apply for admission to Harford County public schools for the year 1956-57." (Plaintiffs' Exhibit 1-a, App. p. 44a)

The record further shows that deferring desegregation of the seventh grade is without even purported justification:

> "The Court: Why can't you admit a child to the seventh grade in 1957?
>
> "The Witness: (Mr. Willis) I can't say why, your Honor, but the policy was moving forward three years, and that was all." (App. pp. 35a-36a)
>
> * * *
>
> "The Court: It is a policy reason and there is no administrative reason why you say the seventh grade in 1958 and not the eighth grade also, that it is only policy reasons.
>
> "The Witness (Mr. Willis): The only extension of the policy that has been accepted for the reasons that have been given.
>
> "The Court: And no administrative reasons?
>
> "The Witness: Well, I won't say none, but at the moment I don't think of any big one, let's put it that way." (App. pp. 36a-37a)

The Board's plans were based not only on the alleged considerations set forth above, but on apprehension that proceeding otherwise might provoke public demonstrations or opposition like some which occurred in Delaware and elsewhere. (App. pp. 30a, 37a, see 146 F. Supp. at p. 95.)

## Argument

*Brown* v. *Board of Education*, 349 U. S. 294 sets forth the only standards concerning what constitutes "deliberate speed": (a) "plaintiffs' . . . admission to public schools as soon as practicable on a nondiscriminatory basis"; and (b) that "[t]he burden rests upon the defendant to establish that such [additional] time is necessary in the public interest and is consistent with good faith compliance at the earliest practicable date." 349 U. S. at p. 300. While the need to solve administrative problems may be occasion for delay, and plans in the first instance are to be formulated by school boards, "the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them." *Ibid.*

The second *Brown* opinion has been considered by District Courts and Courts of Appeals on a number of occasions. In this Circuit, district courts have ordered complete desegregation by the next school year or term in Charlottesville,[1] Arlington,[2] Newport News[3] and Norfolk,[4] where local school officials had taken no steps whatever towards desegregation, and, this Court has affirmed. Moreover, in a series of West Virginia District Court cases in this Circuit involving plans, overcrowding, fiscal problems, and time for consideration, have been rejected as grounds for delay when it was clear that Negro children

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[1] *School Board of the City of Charlottesville* v. *Allen*, 240 F. 2d 59 (4th Cir., 1957); cert. den. 353 U. S. 910.

[2] *Ibid.*

[3] *School Board of the City of Newport News* v. *Atkins*, 246 F. 2d 325 (C. A. 4th, 1957); cert. den. — U. S. —

[4] *Ibid.*

could be admitted notwithstanding the proferred reasons for deferment. *Shedd* v. *Board of Education of County of Logan*, 1 R. Rel. L. Rep 521 (S. D. W. Va. 1956); *Dunn* v. *Board of Education of Greenbrier*, 1 R. Rel. L. Rep. 319 (S. D. W. Va. 1956); *Taylor* v. *Board of Education of County of Raleigh*, 1 Rel. L. Rep. 321 (S. D. W. Va. 1956); *Pierce* v. *Board of Education of Cabell County* (S. D. W. Va. 1956, unreported). These cases have treated overcrowding not as a racial problem but as a spatial one. If there were to be a shortage of space, admissions could be conditioned on room being available—*but not on a racial basis as appellees have done.*

(Of course, such decisions did not outlaw the application of normal transfer criteria. But, in this case, the Negro children barred by the Harford plan may not use normal transfer procedure.)

Other jurisdictions which have reviewed plans divide into two principal categories: on the one hand, cases involving plans of districts in Kentucky, Ohio and the state colleges of Tennessee; on the other, plans involving schools in Arkansas and Nashville. The first group of cases has uniformly rejected delay based upon overcrowding, fiscal problems, transportation difficulties and other administrative considerations where it could not be shown that these actually were a bar to admitting Negro applicants.

In other words, the courts held that it was not enough that problems existed; they could not defer desegregation unless the burden of showing why time was required could be met. In *Willis* v. *Walker*, 136 F. Supp. 177 (W. D. Ky., 1955) the court pointed out that "no white children either before or after the application for admission of the plaintiffs, were denied admission" and that "good faith alone is not the test. There must be 'compliance at the earliest

practicable date.' " 136 F. Supp. at p. 181. Desegregation was ordered by the next school year.[5]

Moreover in *Clemons* v. *Board of Education of Hillsboro*, 228 F. 2d 853 (6th Cir., 1956) cert. denied 350 U. S. 1006, the Court of Appeals held that where as here, white children were not rejected during alleged overcrowding desegregation could not be delayed for that reason. See also *Booker* v. *Tennessee Board of Education*, 240 F. 2d 689 (6th Cir., 1957) cert. den. 1 L. Ed. 2d 915 reaffirming that race may not be used as a standard to deal with crowded conditions.

The second group of cases has approved plans running into perhaps six years on the basis of a recital of problems in school administration. But there has been no effort by appellees in the instant case to catalogue in detail as problems in Harford County the list of avowed reasons for delay proffered in *Aaron* v. *Cooper*, 243 F. 2d 361 (C. A. 8th, 1957) one of the cases justifying delay:

> Foremost among the problems of the Little Rock School District are those of finances, structural organization, enrollment, and the selection and training of an adequate staff. These problems are not new, but they will be greatly accentuated by integration. By its plan the School Board is seeking to integrate its schools and at the same time maintain or improve the quality of education available at these schools. Some of its objectives are to provide the best possible education that is economically feasible, to consider each child in the light of his individual ability and achievement, to foster sound promotion

[5] See also *Gordon* v. *Collins*, 2 R. Rel. L. Rep. 304 (W. D. Ky. 1957) (court rejecting alleged reasons for delay which included overcrowding, transportation difficulties, reallocation problems, need for time to study the problems, unfavorable social conditions; the position of defendants is unreported); *Mitchell* v. *Pollock*, 2 R. Rel. L. Rep. 305 (W. D. Ky., 1957) (rejecting similar grounds for delay), and see, for the same considerations and holding *Garnett* v. *Oakley*, 2 R. Rel. L. Rep. 303 (W. D. Ky., 1957).

> policies, to provide necessary flexibility in the school curriculum from one attendance area to another, to select, procure, and train an adequate school staff, to provide necessary in-service training for the school staff, to provide a necessary educational program for deviates (mentally retarded, physically handicapped, speech correction, etc.), to provide the opportunity for children to attend school in the attendance area where they reside, to foster sound administrative practices, to maintain extra-curricular activities, to attempt to provide information necessary for public understanding, acceptance and support, and to provide a "teachable' group of children for each teacher. With regard to the later objective, it is the policy of the Board to group children with enough homogeneity for efficient planning and classroom management. 143 F. Supp. at p. 860.[6]

Appellants submit that the alleged impedimenta profferred by appellees for delay herein have not only been rejected in the largest number of cases where considerd by the courts, but in those cases where reasons for delay have been held sufficient the barriers have surpassed in complexity those advanced here.

The appellees are not in the dark as to how many Negro applicants they may expect: about 60 in a school system of 14,000 children; at least 15 of these already have been admitted.

Their argument about overcrowding becomes meaningless in view of this small number, when at the same time they concede that comparable white children transferring

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[6] The Nashville (*Kelley* v. *Board of Education of the City of Nashville*), 2 R. Rel. L. Rep. 21 (M. D. Tenn. 1957) delay was found to have been justified by "numerous administrative problems, including increased difficulty in procuring and retaining teachers, teaching adjustments required because of differences in achievement levels of students among Negro and white children, problems arising from a liberalized student transfer system supplanting a strict transfer system, as well as other problems . . ."

from out of the jurisdiction will be admitted. As to deferring desegregation of the seventh grade they are at a loss even to advance a reason. With respect to the high schools they urge only that high school work is so alien from earlier educational experience that Negroes must be introduced a few at a time so that there will be others with whom they can associate. But white children too meet novel situations in high school, and it defies experience to deny that Negro children will make friends with their white classmates.

The chief administrative problem that appellees have experienced has been the formulation and reformulation of so many plans. The clear inference from the record has been that the sole reason for delay has been reluctance to admit Negro children, not difficulties recognized by the Supreme Court's decision. Indeed appellees have stated on a number of occasions that they have put off desegregation because of fear of opposition. But compare, *Jackson* v. *Rawdon*, 235 F. 2d 93 (5th Cir. 1956), cert. den. 352 U. S. 925. While one may not view lightly the attitudinal conflict that may accompany revision of school procedures to comply with the Fourteenth Amendment, still the law has recognized some and rejected other grounds for delay. It does not recognize reluctance or social difficulties. Moreover, as Professor Charles Black, probably the most perceptive commentator on the subject has demonstrated, submitting to community opposition does not create the acquiescence that purports to justify deferring or denying the rights of rejected Negro children pending the delay. Black, Paths to Desegregation, New Republic, October 21, 1957, p. 10.

WHEREFORE it is respectfully submitted that the judgment below be reversed and appellees be required to cease

denying appellants their constitutional rights by the beginning of the next school term.

Respectfully submitted,

THURGOOD MARSHALL,
107 West 43rd Street,
New York, N. Y.,

TUCKER R. DEARING,
627 Aisquith Street,
Baltimore, Md.,

JUANITA J. MITCHELL,
1239 Druid Hill Avenue,
Baltimore, Md.,

ROBERT B. WATTS,
1520 E. Monument Street,
Baltimore, Md.,

JACK GREENBERG,
107 West 43rd Street,
New York, N. Y.,

*Counsel for Appellant.*

IRMA ROBBINS FEDER,
*of Counsel.*

# APPENDIX

## Judgment

This cause having come on for final hearing by the court without a jury on June 11, 1957 and the court having heard all the evidence adduced and being fully advised in the premises, it is hereby ordered, adjudged and decreed as follows:

1. Defendants now and hereafter shall accept applications for admission or transfer to all elementary classes under their control (except in the schools named in paragraph 2 as to which applications will be accepted as described in that paragraph), in accordance with rules and regulations set forth in paragraph 3 and every Negro child's application to classes governed by the instant paragraph shall be considered and granted on the basis upon which it would be considered and granted if he were white.

2. Defendants shall accept Negro children's applications for admission or transfer to Old Post Road, Bel Air and Highland elementary schools for the school year 1958-1959 and thereafter; and shall accept Negro children's applications for admission or transfer to Forest Hill, Jarrettsville and Dublin elementary schools and the sixth grade at Edgewood High School for the school years 1959-1960 and thereafter. Every Negro child's application to the schools named in this paragraph for the respective school years specified herein and thereafter shall be considered and granted on the basis upon which it would be considered and granted if he were white.

3. All applications for transfer to elementary classes shall be made during the month of May on a regular application form furnished by the Board of Education and must be approved by the applicant's classroom teacher and

the principal of the school the applicant attends. Such applications will be reviewed at the regular June meeting of the Board of Education. Applicants and their parents will be informed of the action taken on applications prior to the close of school in June of each year. In no event shall a Negro child's application for admission or transfer be rejected if it would have been granted had he been white.

4. A Negro child's application for admission or transfer to seventh grade classes commencing September, 1958, and thereafter, under defendant's control shall be considered and granted on the basis upon which it would be considered and granted if he were white. Such applications to the following classes shall be so treated during and after the year set forth alongside the class, as follows:

| | |
|---|---|
| eighth grade | — 1959 |
| ninth grade | — 1960 |
| tenth grade | — 1961 |
| eleventh grade | — 1962 |
| twelfth grade | — 1963 |

In 1963 and thereafter all Negro applicants to all classes shall be admitted on the same basis upon which they would be admitted if they were white.

5. Commencing September, 1957 applications for admission or transfer by Negro children not qualified for admission or transfer under paragraph 4 to high schools under defendants' control will be considered and granted if the applicants fulfill special qualifications pertaining to the probability of success of each individual pupil. The qualifications will be measured by intelligence and achievement tests, grade level achievements and other similar matters to be adjudged by a committee consisting of the

principals of the schools from which the pupil is transferring and the school to which he desires to transfer, the Director of Instruction and the county supervisors working in these schools. Apart from the fact that these conditions may be applied only to Negro students not qualified for admission under paragraph 4 no racial distinction is to be made in the administration of these tests and evaluations. Such applications may be made to the Board of Education between July 1 and July 15 of 1957 and years following in which these tests may be given.

6. Infant plaintiff Moore shall be admitted to the sixth grade at the Bel Air School. Infant plaintiff Spriggs shall be admitted to the eighth grade at Edgewood High School.

7. No racial distinctions whatsoever shall be made by defendants in treating Negro children who have been admitted to schools pursuant to this decree.

8. This Court retains jurisdiction for the purpose of granting any other relief that may become necessary.

## Opinion of November 23, 1956

THOMSEN, Chief Judge.

This action, brought by four Negro children seeking admission to certain public schools in Harford County, Maryland, present: (1) the usual questions under *Brown* v. *Board of Education*, 347 U. S. 483, 74 S. Ct. 686, 98 L. Ed. 873; Id., 349 U. S. 294, 75 S. Ct. 753, 99 L. Ed. 1083; (2) the same questions of law which were raised by the defendants in *Robinson* v. *Board of Education*, D. C. D. Md., 143 F. Supp. 481; and (3) a problem of equitable estoppel arising out of a previous action brought by the plaintiffs herein and others against the defendants herein, which was dismissed by the plaintiffs in reliance upon a resolution adopted by the defendants, the Board of Education of Harford County.

### FACTS

Harford County is predominately rural, but in the southern portion of the county there are two large government reservations, the Aberdeen Proving Ground at Aberdeen, and the Army Chemical Center at Edgewood. On these reservations there are non-segregated housing developments.

There are approximately 12,600 white students and 1,400 Negro students in the public schools of Harford County. The defendant Board of Education operates a 6-3-3 system; that is, 6 years of elementary school, 3 years of junior high and 3 years of senior high. The white high schools, at Bel Air, Bush's Corner (North Harford), Edgewood, Aberdeen, and Havre de Grace, are combination junior-senior high schools; the colored schools, at Hickory and Havre de Grace, are "consolidated schools", comprising elementary, junior high and senior high classes.

*Opinion of November 23, 1956*

On June 30, 1955, just one month after the second opinion in *Brown* v. *Board of Education*, the Board of Education of Harford County selected a Citizens Consultant Committee of thirty-six members from all sections of the county, five of whom were Negroes, to consider the problem of desegregation of the public schools in Harford County and to make recommendations to the Board of Education.

On July 27, 1955, a group of Negro parents petitioned the Board of Education, calling upon them "to take immediate steps to reorganize the public schools under your jurisdiction on a nondiscriminatory basis."

The Citizens Consultant Committee held its first meeting on August 15, 1955, and was split up into a number of sub-committees, to consider facilities, transportation and social relationships respectively. A member of the staff of the Board of Education served as consultant to each sub-committee. The sub-committees met at various times during the rest of the year 1955 and the first two months of 1956.

On November 29, 1955, the four infant plaintiffs in the instant case, together with seventeen other Negro children, through their parents and next friends, brought suit in this court against the defendants herein (Civil Action No. 8615), alleging that the Board had "refused to desegregate the schools within its jurisdiction and has not devised a plan for such desegregation," and praying that:

> "1. The court advance this cause on the docket and order a speedy hearing of the application for preliminary injunction and the application for permanent injunction according to law and that upon such hearings:
>
> "2. The Court enter preliminary and permanent judgments that any orders, customs, practices, and usages pursuant to which said plaintiffs are segre-

gated in their schooling because of race, violate the Fourteenth Amendment to the United States Constitution.

"3. The Court issue preliminary injunctions ordering the defendants to promptly present a plan of desegregation to this Court which will expeditiously desegregate the schools in Harford County and forever restrain and enjoin the defendants and each of them from thereafter requiring these plaintiffs and all other Negroes of public school age to attend or not to attend public schools in Harford County because of race.

"The Court allow plaintiffs their costs and such other relief as may appear to the Court to be just."

On February 27, 1956, the Citizens Consultant Committee held a meeting, at which all of the sub-committees presented their final reports, and the full committee unanimously adopted the following resolution:

"To recommend to the Board of Education for Harford County that any child regardless of race may make individual application to the Board of Education to be admitted to a school other than the one attended by such child, and the admissions to be granted by the Board of Education in accordance with such rules and regulations as it may adopt and in accordance with the available facilities in such schools; effective for the school year beginning September, 1956."

On March 7, 1956, the Board of Education of Harford County adopted the resolution as submitted by the Citizens Consultant Committee.

*Opinion of November 23, 1956*

On March 9, 1956, Civil Action No. 8615 came on for hearing before me on defendants' motion to dismiss the complaint, pursuant to Rule 12(b), Fed. Rules Civ. Proc. 28 U. S. C. A. At the beginning of the hearing, counsel for defendants advised the court that the Board of Education of Harford County had "approved or adopted" the recommendation offered by the Citizens Consultant Committee and read the resolution into the record. He then said: "Since that plan embraces the relief prayed for, I think that takes care of that, and I want to call that to Your Honor's attention." Counsel for plaintiffs then said: "We are in a position to enter into a consent decree embodying the terms of this resolution. We would like to discuss it, but I do not think there is any need for further litigation." Counsel for the defendants replied: "I do not think that the Court should enter a consent decree when the relief prayed for is the policy adopted by the Board. I think the complaint should be dismissed in open court because there is really nothing before the Court to effectuate." I then left the bench so that counsel could discuss the matter more freely. When court reconvened the following colloquy took place:

> "Mr. Greenberg: We discussed this resolution that has been adopted by the School Board and we have told counsel for the defendants that we are sure they are proceeding in good faith and this plan is acceptable to us, and we will dismiss our suit and make that a matter of record in open court, and file this.
>
> "Mr. Barnes: That's agreeable to the defendants, your Honor.
>
> "The Court: I think it would be well to have the record show that in view of the fact that you have been presented with this you offered to dismiss the suit, and attach this paper as an exhibit.

"Mr. Greenberg: Yes, sir.

"The Court: I am very happy this has worked out in a very satisfactory way."

The following stipulation, signed by counsel for all parties, was filed in the case on the same day:

"Dismissal of Action

"1. This cause came to be heard in this Court on motion to dismiss the 9th day of March, 1956.

"2. Defendants, by their counsel, presented to the Court the attached Resolution of the Harford County Citizens Consultant Committee, adopted by the Harford County Board of Education, as submitted, at its regular meeting on March 7, 1956.

"3. Relying upon said resolution, as adopted, plaintiffs hereby withdraw their complaint, and pray that the same be dismissed, costs to be paid by plaintiffs."

To this stipulation was attached a certified copy of the resolution recommended by the Citizens Consultant Committee and adopted by the Harford County Board of Education.

On June 6, 1956, the Board of Education adopted the following "Transfer Policy", which all parties agree was reasonable:

"If a child desires to attend a school other than the one in which he is enrolled or registered, it will be necessary for his parents to request a transfer. Applications for transfer are available on request. These requests should be addressed to the Board of Education, c/o Superintendent of Schools, Bel Air, Maryland. Applications will be received by the

Board of Education between June 15 and July 15, 1956. All applications for transfer must state the reason for the request, and must be approved by the principal of the school which the pupil is now attending.

"Applications for transfer will be handled through the usual and normal channels now operating under the jurisdiction of the Board of Education and its executive officer, the Superintendent of Schools.

"While the Board has no intentions of compelling a pupil to attend a specific school or of denying him the privilege of transferring to another school, the Board reserves the right during the period of transition to delay or deny the admission of a pupil to any school, if it deems such action wise and necessary for any good and sufficient reason.

"All applications for transfer, with recommendations of the Superintendent of Schools, will be submitted to the Board of Education for final consideration at the regular meeting of the Board on Wednesday, August 1, 1956. When requests for transfer are approved, parents must enroll their child at the school on the regular summer registration date, Friday, August 24, 1956."

The transfer policy was advertised in all newspapers published in Harford County. Sixty applications for transfer of Negro pupils were submitted within the time specified.

On August 1, 1956, the Board of Education of Harford County adopted a "Desegregation Policy", embodied in a document which recited the appointment of the Citizens Consultant Committee, the recommendation made by that Committee, the resolution adopted by the Board of Education on March 7, 1956, and the transfer policy adopted by the Board in June. The statement of Desegregation Policy continued as follows:

*Opinion of November 23, 1956*

"The Supreme Court decision, which required desegregation of public schools, provided for an orderly, gradual transition based on the solution of varied local school problems. The resolution of the Harford County Citizens Consultant Committee is in accord with this principle. The report of this committee leaves the establishment of policies based on the assessing of local conditions of housing, transportation, personnel, educational standards, and social relationships to the discretion of the Board of Education.

"The first concern of the Board of Education must always be that of providing the best possible school system for all of the children of Harford County. Several studies made in areas where complete desegregation has been practiced have indicated a lowering of school standards that is detrimental to all children. Experience in other areas has also shown that bitter local opposition to desegregation in a school system not only prevents an orderly transition, but also adversely affects the whole educational program.

"With these factors in mind, the Harford County Board of Education has adopted a policy for a gradual, but orderly, program for desegregation of the schools of Harford County. The Board has approved applications for the transfer of Negro pupils from colored to white schools in the first three grades in the Edgewood Elementary School and the Halls Cross Roads Elementary School. Children living in these areas are already living in integrated housing, and the adjustments will not be so great as in the rural areas of the county where such relationships do not exist. With the exception of two small schools, these are the only elementary buildings in which space is available for additional pupils at the present time.

"Social problems posed by the desegregation of schools must be given careful consideration. These can be solved with the least emotionalism when younger children are involved. The future rate of expansion of this program depends upon the success of these initial steps."

Pursuant to the Desegregation Policy so adopted, fifteen of the sixty applications were granted, and forty-five, including those of the infant plaintiffs in the instant case, were refused. On August 7, 1956, the defendant Charles W. Willis, Superintendent of Schools, sent the following letter to the parents of each of the infant plaintiffs:

"The Board of Education, at its regular August meeting, adopted a policy for the desegregation of Harford County schools. Under the provisions of this policy your child will not be allowed to transfer from his present school. Your request for a transfer has been refused by the Board of Education.

"A copy of the desegregation policy is enclosed."

Neither the infant plaintiffs nor their parents appealed to the State Board of Education from the action of the County Superintendent denying their requests for transfer. Nor have any appeals been filed by or on behalf of any of the other Negro children whose requests for transfer were refused.

On August 28, 1956, the four infant plaintiffs by their parents and next friends filed the instant suit, pursuant to Rule 23(a)(3), "for themselves and on behalf of all other Negroes similarly situated", alleging most of the facts set out above and other facts, some of which are disputed, which need not be detailed at this time.

Infant plaintiff Moore seeks transfer from the Central Consolidated Elementary School in Hickory to the elemen-

tary school in Bel Air, where he resides; Spriggs seeks transfer from the school in Hickory to the High School (junior high) in Edgewood, where he resides; Slade and Garland seek transfer from the Havre de Grace Consolidated School to the Aberdeen High School (9th and 11th grades respectively). They pray that:

> "1. The Court advance this cause on the docket and order a speedy hearing of the application for preliminary injunction and application for permanent injunction according to law and that upon such hearing;
>
> "2. The Court enter preliminary and permanent judgments, that any orders, customs, practices and usages pursuant to which said plaintiffs are each of them, their lessees, agents and successors in office from denying to plaintiffs and other Negro residents of Harford County of the State of Maryland admission to any Public School operated and maintained by the Board of Education of Harford County, on account of race and color." (sic)

Defendants filed a motion to dismiss the complaint pursuant to Rule 12(b), raising substantially the same points which were considered in *Robinson* v. *Board of Education of St. Mary's County, supra.* I overruled that motion on October 5, 1956. Defendants filed their answer on October 24, and the case was set for hearing on November 14. Both sides offered testimony and documentary evidence. From the testimony it appears that most, but not all, of the schools in Harford County are overcrowded if the "standards" or "goals" set out by the State are considered, namely, an average of 30 per class in elementary schools and 25 per class in secondary schools. But defendants conceded that any white children moving into the county would be admitted to the appropriate white school, however crowded

The factors considered by the Board of Education in adopting the August 1 Desegregation Policy were discussed at some length. The President of the Board of Education and the County Superintendent testified that they did not consult counsel before adopting the August 1 Desegregation Policy, but that they thought this policy was in accord with the recommendation of the Citizens Consultant Committee and with the March 7 resolution adopted by the Board.

Plaintiffs' counsel do not charge bad faith against either the Board or the Superintendent, but contend that:

> "I. The Harford County School Board Resolution of March 7, 1956, meant that from the following school year and thereafter there would be no legally compelled racial segregation of school children in Harford County;
>
> "II. The defendants are estopped from any further delay in complete integration by their action in causing plaintiffs to withdraw plaintiffs' original suit in reliance on the Board's resolution, which resolution was expressly incorporated by reference into the court's order of dismissal;
>
> "III. Plaintiffs are entitled to judicial rather than administrative relief at this time in view of the history and facts of this case;
>
> "A. Defendants, by their actions, are estopped from asserting the doctrine of administrative exhaustion as a defense;
>
> "B. Even if defendants were not estopped from raising the defense of the doctrine of administrative exhaustion, the defense would nevertheless fail as the doctrine is not here applicable;
>
> "IV. Even if defendants could validly raise the questions of necessary administrative delay, their

own actions clearly demonstrate the fact that no additional time is needed to solve administrative problems;

"A. Defendants are administratively ready to effectuate desegregation;

"B. 'Community unreadiness' constitutes no legal justification for continued segregation."

## Discussion

[1] The Maryland statutes and decisions were analyzed in *Robinson* v. *Board of Education of St. Mary's County*, *supra*, 143 F. Supp. at pages 487-491. I adhere to that analysis, and it need not be repeated here. It is clear that some of the factors considered by defendants in the instant case when they adopted the August 1 Desegregation Policy, and some of the points argued by counsel for plaintiffs in opposition thereto, involve administrative problems, over which the State Board of Education has jurisdiction, and which should be appealed to that Board under the Maryland authorities. Some of the other factors and points involve legal questions, which under Maryland law are for the courts. Most, if not all, involve both administrative and legal problems. Even the estoppel point is a mixed question, because the March 7 resolution leaves open at least the question of available facilities, whatever other matters may have been foreclosed.

Whether the court should attempt to segregate the legal questions and decide them at this time, or should defer any decision until the State Board has been given an opportunity to pass on the problem as an integrated whole, is a matter of comity and discretion. Since, at the time of the hearing in the *St. Mary's County* case, the State Board assured the court that it will give prompt attention to any

appeal filed by or on behalf of Negro students, I am satisfied that I should not make a final decision in this case until the plaintiffs have appealed to the State Board from the action of the County Superintendent denying their applications for transfer. *Brown* v. *Board of Education*, 349 U. S. 294, 75 S. Ct. 753; *Hood* v. *Board of Trustees of Sumter County School District No. 2*, 4 Cir., 232 F. 2d 626; *Carson* v. *Board of Education of McDowell County*, 4 Cir., 227 F. 2d 789; *Robinson* v. *Board of Education of St. Mary's County*, D. C. D. Md., 143 F. Supp. 481. However, the final decision in this court, if one is necessary after the State Board has acted, should be rendered within such time that the losing parties may have an appeal heard by the Court of Appeals for the Fourth Circuit at its June, 1957 term.

## Conclusions

[2] 1. The appointment of the Citizens Consultant Committee in the summer of 1955, its study, resulting in its recommendation to the Board of Education, and the resolution adopted by the Board on March 7, 1956, were a prompt and reasonable start toward compliance with the Supreme Court ruling.

2. I intimate no opinion at this time with respect to the sufficiency or propriety of the Desegregation Policy adopted by the Board on August 1, 1956.

3. I will enter a decree dismissing this action unless the plaintiffs appeal to the State Board of Education on or before December 15, 1956, from the action of the County Superintendent refusing their applications for transfer. If plaintiffs enter such an appeal, I will stay further proceedings in this case until the State Board shall have decided the appeal or shall have delayed decision for an unreasonable time; provided that after the State Board shall have rendered its decision, or after March 1, 1957, whichever is earlier, either plaintiffs or defendants may request the court to set this case for further argument at a prompt decision.

## Opinion of June 20, 1957

THOMSEN, Chief Judge.

This action was brought by four Negro children, on their own behalf and on behalf of those similarly situated, seeking admission to certain public schools in Harford County, Maryland. The background and first stages of the case are detailed in an opinion filed herein on November 23, 1956, D. C., 146 F. Supp. 91.

Following that opinion, the four plaintiffs and eight other children, who have asked and been granted leave to intervene in this case, filed appeals with the State Board of Education from the refusal of the Superintendent of Schools of Harford County to grant their applications for transfer from consolidated schools for colored children to various white schools which were not desegregated in September, 1956.

While those appeals were pending before the State Board, on February 6, 1957, the Harford County Board adopted the following "Extension of the Desegregation Policy for 1957-1958":

> "Applications for transfers will be accepted from pupils who wish to attend elementary schools in the areas where they live, if space is available in such schools. Space will be considered available in schools that were not more than 10% overcrowded as of February 1, 1957. All capacities are based on the state and national standard of thirty pupils per classroom.
>
> "Under the above provision, applications will be accepted for transfer to all elementary schools except Old Post Road, Forest Hill, Bel Air, Highland, Jarrettsville, the sixth grade at the Edgewood High School, and Dublin. Such applications must be made during the month of May on a regular application form furnished by the Board of Education, and

must be approved by both the child's classroom teacher and the principal of the school the child is now attending.

"All applications will be reviewed at the regular June meeting of the Board of Education and pupils and their parents will be informed of the action taken on their applications prior to the close of school in June, 1957."

After a hearing, the State Board dismissed the appeals, finding that "the Harford County Board acted within the policy established by the State Board", that "the County Superintendent acted in good faith within the authority set forth in the August 1, 1956, Desegregation Policy adopted by the County Board",[1] that the Desegration Policy was adopted in a bona fide effort to make a reasonable start toward actual desegregation of the Harford County public schools", and that "this initial effort [the desegregation of three grades in two elementary schools] has been carried out without any untoward incidents". The State Board also took "cognizance of the resolution of the County Board of February 6, 1957", set out above herein, "as well as the testimony to the effect that the proposed Harford County Junior College, which is to be established in Bel Air in the fall of 1957, will open on a desegregated basis, and also the testimony to the effect that the present program of new buildings and additions will make further desegregation possible".

After the decision of the State Board, plaintiffs set this case for further hearing, as provided in the earlier decree, 146 F. Supp. at page 98. That hearing was held on April 18, 1957. Charles W. Willis, the Harford County Superintendent, explained and amplified the February 6, 1957 resolution of the County Board. The President of the

[1] See 146 F. Supp. at page 95.

Board and its counsel accepted that interpretation. So explained and amplified, the plan was substantially the same as the plan which was later adopted by the County Board on May 1, 1957, as follows:

> "The Board reviewed its desegregation policy of February 6, 1957. In accordance with this plan, the following elementary schools will be open in all six grades to Negro pupils at the beginning of the 1957-1958 school year:
>
> "Emmorton Elementary School
> "Edgewood Elementary School
> "Aberdeen Elementary School
> "Halls Cross Roads Elementary School
> "Perryman Elementary School
> "Churchville Elementary School
> "Youth's Benefit Elementary School
> "Slate Ridge Elementary School
> "Darlington Elementary School
> "Havre de Grace Elementary School
> "6th Grade at Aberdeen High School
>
> "Schools now under construction or contemplated for construction in 1958, if no unforeseen delays occur, will automatically open all elementary schools to Negro pupils by September, 1959. As a result of new construction, the elementary schools at Old Post Road, Bel Air, and Highland will accept applications for transfer of Negro pupils for the school year beginning in September, 1958. Forest Hill, Jarrettsville, Dublin and the sixth grade at the Edgewood High School would receive applications for the school year beginning in September, 1959.
>
> "As a normal result of this plan, sixth grade graduates will be admitted to junior high schools for the first time in September, 1958 and will pro-

ceed through high schools in the next higher grade each year. This will completely desegregate all schools of Harford County by September, 1963.

"The Board will continue to review this situation monthly and may consider earlier admittance of Negro pupils to the white high schools if such seems feasible. The Board reaffirmed its support of this plan as approved by the State Board of Education."

At the April, 1957 hearing, I ruled tentatively that the plan was generally satisfactory for the elementary grades, but not for the high school grades, and suggested that the parties attempt to agree on a modified plan. Conferences between counsel were held, but no agreement was reached. The County Board, however, on June 5, 1957, modified the plan as follows:

"The Board reaffirmed its basic plan for the desegregation of Harford County Schools, but agreed to the following modification for consideration of transfers to the high schools during the interim period while the plan is becoming fully effective.

"Beginning in September, 1957, transfers will be considered for admission to the high schools of Harford County. Any student wishing to transfer to a school nearer his home must make application to the Board of Education between July 1 and July 15. Such application will be evaluated by a committee consisting of the high school principals of the two schools concerned, the Director of Instruction, and the county supervisors working in these schools.

"These applications will be approved or disapproved on the basis of the probability of success and adjustment of each individual pupil, and the committee will utilize the best professional measures of both achievement and adjustment that can be obtained in each individual situation. This will include, but

not be limited to, the results of both standardized intelligence and achievement tests, with due consideration being given to grade level achievements, both with respect to ability and with respect to the grade into which transfer is being requested.

"The Board of Education and its professional staff will keep this problem under constant and continuous observation and study."

The modified plan was presented to the court at a hearing on June 11, 1957. It was made clear that when an elementary school has been desegregated, all Negro children living in the area served by that school will have the same right to attend the school that a white child living in the same place would have, and the same option to attend that school or the appropriate consolidated school that a white child will have. The same rule will apply to the high schools, all of which operate at both junior high and senior high levels, as they become desegregated, grade by grade. Of course, the County Board will have the right to make reasonable regulations for the administration of its schools, so long as the regulations do not discriminate against anyone because of his race; the special provisions of the June 5, 1957 resolution will apply only during the transition period.

[1] Willis also testified that the applications which will be made pursuant to the June 5, 1957 modification will be approved or disapproved on the basis of educational factors, for the best interests of the student, and not for other reasons. I have confidence in the integrity, ability and fairness of Superintendent Willis and of the principals, supervisors and others who will make the decisions under his direction. In the light of that confidence, I must decide whether the modified plan meets the tests laid down in the

opinions of the Supreme Court and of the Fourth Circuit,[2] with such guidance as may be derived from other decisions.[3] The burden of proof is on defendants to show that a delay during a transition period is necessary, that the reasons for the delay are reasons which the court can accept under the constitutional rule laid down by the Supreme Court, and that the proposed plan is equitable under all the circumstances. In considering whether defendants have met that burden, the court must recognize that each county has a different combination of administrative problems, traditions and character. Many counties are predominantly rural, others suburban; some have large industrial areas or military reservations. See 146 F. Supp. at page 92.

[2] Eleven out of the eighteen elementary schools in Harford County will be completely desegregated in September, 1957, three months from now. Three more will be completely desegregated in 1958, and the remaining four in 1959. The reason for the delay in desegregating the seven schools is that the county board and superintendent believe that the problems which accompany desegregation can best be solved in schools which are not overcrowded and where the teachers are not handicapped by having too many children in one class. That factor would not justify unreasonable delay; but in the circumstances of this case it justifies the one or two years delay in desegregating the seven schools.

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[2] Brown v. Board of Education, 349 U. S. 294, 75 S. Ct. 753, 99 L. Ed. 1083; Brown v. Board of Education, 347 U. S. 483, 74 S. Ct. 686, 98 L. Ed. 873; Carson v. Warlick, 4 Cir., 238 F. 2d 724; Carson v. Board of Education of McDowell County, 4 Cir., 227 F. 2d 789.

[3] Aaron v. Cooper, D. C. E. D. Ark., 143 F. Supp. 855; Kelley v. Board of Education of the City of Nashville, M. D. Tenn., 2 Race Rel. L. Rep. 21 (1957). Cf. Mitchell v. Pollock, W. D. Ky., 2 Race Rel. L. Rep 305 (1957).

With respect to the high schools, other factors are involved. Superintendent Willis testified that when a child transfers to a high school from another high school he faces certain problems which do not arise when he enters the seventh grade, which is the lowest grade in the Harford County high schools. After a year or so in the high schools social groups, athletic groups and subject-interest groups have begun to crystallize, friendships and attachments have been made, cliques have begun to develop. A child transferring to the school from another high school does not have the support of a group with whom he has passed through elementary school. A Negro child transferring to an upper grade at this time would not have the benefit of older brothers, sisters or cousins already in the school, or parents, relatives or friends who have been active in the P. T. A. High school teachers generally, with notable exceptions, are less "pupil conscious" and more "subject conscious" than teachers trained for elementary grades, and because each teacher has the class for only one or two subjects, are less likely to help in the readjustment. The Harford County Board had sound reasons for making the transition on a year to year basis, so that most Negro children will have a normal high school experience, entering in the seventh grade and continuing through the same school. But I was unwilling in April to approve a plan which would prevent all Negro children now in the sixth grade or above from ever attending a desegregated high school.

However, the modified plan adopted on June 5, 1957, permits any Negro child to apply next month for transfer to a presently white high school, and if his application is granted, to be admitted in September, 1957, three months hence. This plan is different from any to which my attention has been called or about which I have read. It is an equitable way of handling the transition period. My only doubt is whether it is necessary to postpone until September,

1958, the complete desegregation of the seventh grade. But I am not charged with the responsibility of administering the Harford County public school system. Although I think the reasons given for the delay of one year are less satisfactory than the reasons given for the rest of the plan, a federal court should be slow to say that the line must be drawn here and cannot reasonably be drawn there, where the difference in time is short and individual rights are reasonably protected, during the transition period, as they are by the June 5, 1957 modification.

[3] Plaintiffs are obviously worried whether the June 5 plan will be carried out in good faith, or whether it will be used as a means of postponing the admission of Negro children into the high schools without proper justification. Although, as I have said, I have confidence in Superintendent Willis and his staff, plaintiffs' doubts are not unreasonable in view of the past history of this litigation. I will, therefore, enter a decree which will spell out the rights of individual children under the plan, and will retain jurisdiction of the case, so that if any child or his parents feel that his application has been rejected for a reason not authorized by the modified plan, a prompt hearing may be granted.

There remains the question of estoppel, based upon the resolution adopted by the County Board on March 7, 1956, and the interpretation of that resolution by its counsel in open court in the earlier Harford County case, as a result of which the plaintiffs therein dismissed their action. The facts on this point are set out fully in 146 F. Supp. 93 et seq.

[4] The March 7, 1956 resolution was somewhat ambiguous, but, as it was interpreted by defendants' counsel in open court, plaintiffs were justified in believing, as I did, that applications for transfer would be considered without regard to the race of the applicant. The County

Board interpreted it differently in the statement entitled "Desegregation Policy" adopted on August 1, 1956; see 146 F. Supp. at page 95. I cannot accept the interpretation adopted by the County Board, but I find that it was adopted as a result of a mistake and not as the result of any bad faith on the part of the Board, the Superintendent, or their counsel. The Board adopted the Desegregation Policy of August, 1956, in the honest belief that it was to the best interests of all of the children in the County. Pursuant to that policy the Superintendent admitted fifteen Negro children to two previously white schools, but denied admission to forty-five others, including the infant plaintiffs herein.

There is grave doubt whether a governmental agency such as a county school board can be estopped from adopting a policy, otherwise legal, which it believes to be in the best interests of all the people in the County. In the instant case it would be inequitable and improper, on the ground of estoppel, to require the County Board to open all schools to Negroes immediately, as requested in the complaint. The County Board should not be foreclosed by the facts which I have found from taking such actions, and adopting and modifying such policies, as it believes to be in the best interest of the people in the County, so long as those actions and those policies are constitutional.

[5] The individual plaintiffs in the earlier case, however, were prevented from pressing their individual rights in this court and on appeal by the adoption of the March 7, 1956 resolution and by what took place in this court in that case. See 146 F. Supp. 93 et seq. Two of those infant plaintiffs are before the court in this case, and their counsel urge that their individual rights, as well as any class rights, be enforced. The reasons which prevent an estoppel against the County Board so far as its general

policies are concerned, do not apply with equal force to the individual claims of those two children. It would not be equitable to delay any further the enforcement of their individual rights.

I will, therefore, include in the decree a provision enjoining the County Board from refusing to admit Stephen Moore and Dennis Spriggs to whatever school would be appropriate for them if they were white.

## Excerpts from Testimony

* * *

Direct testimony of CHARLES W. WILLIS, Superintendent of Schools.

[15] Q. How many Negro children applied? A. We had 59 applications, and there was a mix-up on one that we later admitted.

[16] Q. Well, approximately? A. That made 60.

Q. How many Negro children are there in the County School System altogether? A. A little over 1400 at the present time.

Q. How many white children are there in the County School System? A. About 12,600, roughly ten percent Negro children, about 14,000 children.

Q. That is 60 children of the total school population out of how many? A. 14,000.

Q. And how many Negro children were admitted? A. Fifteen.

Q. Now, what was the reason for admitting fifteen rejecting the other forty-five? A. The main reason why was we had facilities in the areas where the children were admitted, and we had integrated housing in those areas, and we felt that we would have less social adjustment problems in the lower grades, and this was the beginning of the plan of gradual integration, and we felt that that would work in our System.

We had studied all we could find out about previous attempts and we had found out that trouble usually arose in [17] rural areas, quite a bit more from rural areas, and we had committees from these rural areas, protest any action on the part of the Board, and this seemed like the most workable plan.

Q. Was there an absence of facilities to admit the forty-five who desired admission? A. In some places, yes.

Q. For how many places? A. Well, I can't exactly say specifically because I don't know just where the applications were from, which schools they were made from.

Mr. Barnes: Maybe you had better ask him about a specific school. Ask him about a specific school.

The Court: Eventually I want to know about the four applications as well as the others.

*By Mr. Greenberg:*

Q. Now, in what instances was there an absence of facilitiesities—that is, tell us in something more than just general terms—with respect to not admitting any of these forty-five applicants who desired admission. A. That was from the area in Bel Air, Havre de Grace, Aberdeen, Jarrettsville, Highland, Churchville, Youth Benefit.

Mr. Greenberg: Should I give him the list?

The Witness: Yes, sir, I better look at it to be sure.

Old Post Road, Emmerton, Aberdeen, Youth Benefit, Forest Hill, Churchville, Bel Air.

[18] The Court: Jarrettsville.

Mr. Greenberg: Churchville.

The Witness: Highland, Dublin, Havre de Grace. Those are Elementary Schools.

The Court: Well, Aberdeen Elementary, Bel Air Elementary.

The Witness: All of those are Elementary.

The Court: All of those Elementary?

The Witness: Yes, not high schools. Bel Air.

The Court: A matter of facilities?
The Witness: Yes. North Harford. Edgewood
The Court: Jarrettsville.

*By Mr. Greenberg:*

Q. Mr. Willis, are you aware that the Citizens Consultant Committee reported that there is an excess of space in the Havre de Grace Elementary and High School? A. No, I was not aware they reported on the Havre de Grace Elementary School, no.

Q. Well, look at page 4. A. Well, this is a four-room affair, and we had this abandoned school building, and this is used for purposes of special education.

Q. What about the high school? A. The high school I didn't list.

[19] The Court: You just said.
The Witness: The Havre de Grace High School, no, I didn't include that.

*By Mr. Greenberg:*

Q. You listed about fifteen schools in which there was supposed to be an absence of facilities; is that correct? A. Yes, sir, according to the standards that are used nationally.

Q. That would be an average of about three Negro children out of the total in those schools, and if there were white children that moved into the area, would they be admitted? A. They would be admitted.

Q. So it is not the absence of facilities but the fact that the children were Negro; is that correct? A. I would say that is not exactly it, no. We have to consider a lot of factors including the transportation factor, which is one

of the big things in the County, as we transport over 14,000 children, and I think there is the plan, I mean the idea of adjusting the thing and if you wish, let me explain it.

Q. Not at this time, no.

The Court: I think you should let him explain it if he wishes to do so.

The Witness: Now, I would like to describe it in this way, your Honor. When the original opinion, the original [20] opinion of the Supreme Court came out in 1954, the first opinion, the members of the Board of Education felt about these clearly in needed facilities in the schools and were approached by a great many people particularly in our rural areas about how impossible it was at the time for us to do anything along these lines.

The Court: In the matter of—

The Witness: In the matter of integration, and it was the thought that if we would do it gradually in a matter of starting off in one area which was better prepared for the integration program than in another area we should do it that way, we would have a better chance of success in these schools.

*By Mr. Greenberg:*

Q. If white persons moved from Delaware or Virginia or elsewhere, moved into Harford County, that is at the present time, such as to work in an industrial plant, would their children be admitted to the schools at the present time? A. Yes, sir, they would.

• • •

[33] Q. Why did you and the Board integrate the first three grades in Bel Air Elementary—Edgewood Elementary School and [34] Hall Cross Roads School and not

the other grades in these and the other schools in Harford County? A. For these reasons: One reason was that space was limited in these schools; two, the people were used to living together in integrated housing and working together in areas of industrialization, and we also had been informed by Mr. Wilson, our attorney, that the suggestion to begin with a control area had been made last year, and we got the impression that the feeling was that if we could start in an area of decontrol than any other place we had a much better chance of success.

Q. Well, were there any other reasons that moved the Board? A. One was that in these specific areas we found that little children had no prejudices; they can adjust more easily than older children who have fixed prejudices, or as adults, and also there is the problem that if you begin with children putting them together that their social adjustments are much easier, they can adjust themselves more readily, and are more emotionally stable, and this seemed a more favorable climate in which to work, and our experience has shown that what we have done is working satisfactorily, and the children are getting along all right and satisfactorily.

Q. And it was for those reasons that the Board announced [35] its desegregation policy of August 1st, 1956 that you denied these applications on August 7th, 1956? A. I had no other reason except this that—

Q. Yes. A. —that the Board is primarily concerned with the educational problem, and they were interested in everyone getting the best possible education and also in the non-interference with the advancement or extension of the whole educational program, and we read in the papers, principally in Delaware and other places that these things have caused problems, trouble with the integration problem, which was something that could affect the whole school system.

Mr. Greenberg: I move to strike out this testimony, Your Honor, problems in Delaware, and so on, there is no eveidence that any of those things have any effect here, and in addition to that, I submit that it is totally irrelevant.

The Court: Well, if it is one of the things that influenced them it may be an important consideration. That was one of the points you are making.

• • •

[47] The Court: As to the next question, I will allow [48] either side to object if they wish to object because it is pretty close to what the Court has to decide, but I take it that a decision on these questions involves what might be called administrative factors and policy factors, and that in any final decision they may be mixed.

What administrative reasons were there for refusing the transfer of each of these four children?

Mr. Barnes: Your Honor, don't we have to define what an administrative reason is or factor is?

The Court: Well, what he has said was that in the case of two of the children there was an overcrowded condition in the Bel Air School. There was an overcrowded condition in the Edgewood school. There was no overcrowded condition in Aberdeen.

Perhaps this is the way to put it: In making your decision with respect to these sixty children, did you consider the overcrowded condition of a school, that is, an individual school, as a reason for or a reason against transferring children, or was the consideration of the overcrowded condition of the individual school simply one of the factors considered in adopting the general policy?

The Witness: I think there is a yes or no answer which requires an explanation. I think the over-all

policy was predicated upon the things that I have just mentioned [49] before which restricted the permission to transfer the first three grades, and within that policy facilities were considered.

The Court: So that confining it to the first three grades was a question of—

The Witness: Facilities.

The Court: —facilities.

The Witness: Yes, no—

The Court: No, so the question of confining it to the first three grades was a question of policy. That is, in the first three grades facilities were considered?

The Witness: That is correct. That is what I meant to say.

The Court: Was the decision to limit it to the two schools, yours or the School Board's?

The Witness: Well, I guess we come back to the other statement that it was a matter of facilities in the early schools that were available.

The Court: Were they the only two schools that had the facilities available or were there a number of other schools in which had facilities been available to which a child might have been admitted if he had applied?

The Witness: There were two other schools, one in Perryman and Darlington.

The Court: Two other schools were not overcrowded?

[50] The Witness: That is correct.

The Court: And they were—and you say no applications for Perryman?

The Witness: No.

The Court: And there was one application for Darlington?

The Witness: Yes.

The Court: And that was refused?

The Witness: Yes.

The Court: For policy reasons?

The Witness: Policy reasons I would say outside of the original policy, yes.

The Court: Because it was a particularly sensitive spot?

The Witness: Yes, it is a very rural area, one of our most rural areas.

The Court: I think that is all I have.

If either side wishes to ask any further questions based upon the line I have opened up, you are welcome to do so.

*By Mr. Greenberg:*

Q. When you speak of "overcrowding" what do you mean by overcrowding? What is your definition of overcrowding? A. Over thirty in an elementary and over twenty-five in a high school.

[51] Q. Then in each of these schools when they have that many they are overcrowded? A. No, you can't say that because in a high school you might have in one class eight or ten or in another forty or forty-five.

Q. So you mean the over-all average? A. That is correct. Those are the standard figures used in practically all school analyses.

The Court: I think that is a fact that the Court would have to find that you will have to use another method of calculating crowding in the high and elementary because there is a difference in courses.

The Witness: Yes.

*Charles W. Willis—Direct*

*By Mr. Greenberg:*

Q. Now, in passing upon the application of each applicant for transfer, did you look at the school to which he applied, the grade in which he was applying and determine that it was crowded or not crowded? A. Yes.

Q. You did that? A. Yes.

Q. And it turned out that the only two schools in Harford County that weren't crowded were these two schools to which the plaintiffs, or the two schools to which certain applicants were seeking admission?

[52] The Court: I thought he said four.

The Witness: Yes.

*By Mr. Greenberg:*

Q. But if a white child had applied to any of the so-called overcrowded schools he would have been admitted? A. That's correct.

The Court: Were there Negro schools in these overcrowded also?

The Witness: Slightly, yes, but they are both combination schools, part high and part elementary, and you have to use both standards on them, but they are just slightly over capacity.

The Court: Are they more overcrowded or less overcrowded than white schools, or are they some one way and some the other?

The Witness: I would say it would be about like some of the others, your Honor, but I would like to answer your question specifically this way that they would have about a ten percent over their—they would be about ten percent over their capacity based upon the figures that we discussed before.

*David G. Harry—Cross*

The Court: You are talking about the Hickory Consolidated?

The Witness: Yes.

[53] The Court: Is about ten percent?

The Witness: About that point.

The Court: How about the Bel Air High school?

The Witness: That is about thirty-five percent. It has a capacity of 690, and it's something like 800.

The Court: Is the Edgewood High School any more overcrowded than the Hickory Consolidated School?

The Witness: I don't think so. I think they are probably about the same.

The Court: The other three were a matter of policy?

The Witness: Yes.

• • •

Cross-examination of DAVID G. HARRY, President of School Board.

[62] Q. You say these rural areas are sensitive areas; is that correct? A. That is correct.

Q. And if these people moved in you would still refuse? A. Well, it is part of the process of the educational system in rural areas and when you find it is working in one part of the County you have to work it out as a County System and not as an individual system, and when you find it is working in one part of the County you can move it to the other parts of the County, but it was my opinion and the opinion of the Board that we must limit it to the areas which are at the present time integrated in housing and in areas where the requests were greatest.

Q. So your reason was based on the fear that there might be conflict or racial difficulties? A. That is my feeling.

• • •

[104] The Court: Why can't you admit a child to the seventh grade in 1957?

The Witness: (Mr. Willis) I can't say why, your Honor, but the policy was moving forward three years, and that was all.

The Court: Is there any administrative reason as distinguished from the considerations which may legally be applied under the plan—I don't want to limit the question; I want to get everything—but what is the reason or reasons why children cannot be admitted to Junior High School in the fall of 1957?

You see, I am not in passing upon your plan passing upon the validity of the reasons that you offer for that plan. Some reasons I presume are valid; some reasons are invalid.

I am not saying what the reasons are. Each one must be applied to the facts of the particular case.

What is the reason why you can't admit people to the seventh grade?

The Witness: The only thing that I can say is that in extending the policy it was a gradual, a policy of gradual desegregation, and the Board in discussing it planned only to extend it three years at this time.

The Court: That's a matter of policy rather than [105] a matter of administrative necessity.

The Witness: Or administrative convenience, and your policy reasons have been stated in the evidence.

The Witness: Yes.

The Court: I want to be sure that when you have administrative reasons that they may be considered separately.

Now, I take it that you are allowing a child to enter the seventh grade there, would you permit a transfer to the eighth and ninth grades?

The Witness: The policy has not been extended beyond that.

The Court: Well, are there administrative reasons for saying that at the high school level children should start

at the seventh grade in junior high and the tenth grade in senior high?

The Witness: I think nothing but policy reasons.

The Court: Nothing but policy reasons?

The Witness: That is correct.

The Court: It is a policy reason and there is no administrative reason why you say the seventh grade in 1958 and not the eighth grade also, that it is only policy reasons.

The Witness: The only extension of the policy that has been accepted for the reasons that have been given.

[106] The Court: And no administrative reasons?

The Witness: Well, I won't say none, but at the moment, I don't think of any big one; let's put it that way.

• • •

[157] Mr. Barnes: Well, here is what I am afraid of. If you push this thing too fast, as my brother wants me to do, you are going to have some incidents among the students themselves in these high schools until after this whole problem has been developed in the lower grades when you are not likely to have those problems, and the Board can say honestly, "We have tried it in the lower grades and it worked well and there have been no incidents", and you go in with an entirely different atmosphere, not only from the public viewpoint, and I think myself it's perfectly absurd to say that you can't give any consideration to the public reaction in the public schools, but however that may be, the reaction of the children themselves because, if your Honor please, you can't get away from the fact, can't help but reflect the attitudes of their parents particularly in the adolescent age, and it's nonsense to say, well because you don't fear riots it has no effect upon the pedagogical system of the county. It works on the minds of the children.

If these colored children are not accepted, if they are rejected, whether it be by cold indifference or by active hostility, it is going to adversed affect their education.

[158] The Court: Well, isn't that just what the Supreme Court has said you can't consider?

Mr. Barnes: No, I don't think so, because that has to do with the pedagogical system of education.

The Court: Well, if you can continue this prejudice forever, then you will never get anywhere.

Mr. Barnes: No, not that.

The Court: You will never get anywhere.

Mr. Barnes: No, I agree you couldn't continue it forever, that I am quite willing to concede; but where you are making a bona fide effort to do it reasonably and rationally and to meet that problem, which we never have, certainly within a reasonable time to my way of thinking. This segregation situation has been with us for over a century.

The Court: What is going to be better in 1958 than in 1957?

Mr. Barnes: Because you will have your complete elementary schools practically completely integrated.

The Court: No, not completely integrated.

Mr. Barnes: No.

The Court: You will have two or three children who will have graduated from the elementary schools, two or three, or maybe a dozen, Negro children who will have had one or two years in the elementary schools.

[159] Mr. Barnes: That is very important, it seems to me.

The Court: And that's all you are going to have.

Mr. Barnes: That's true, and that's important, it seems to me.

The Court: And most of them are going to have one year.

Mr. Barnes: Well, that's so, because you have a pragmatic system as against a theoretical because the thing is, will it work?

*Charles W. Willis—Direct*

If I were going to theorize about this, I would say, "Well, nothing has ever happened, nothing is going to happen", and then it happens, what then?

Now, we have this system that has been adopted—

• • •

[175] Mrs. Mitchell: Your Honor, there has just been received this last resolution, and it is the first knowledge we have received of any action of the Board of Education of Harford County, and we would like to have the opportunity to go over the contents of the resolution which was enacted on June 5, 1957, because we have not had an opportunity to confer about it.

The Court: Well, a copy was given to me about five minutes ago; so we are in about the same situation.

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## Excerpts from Plaintiff's Exhibit 1-a

Aberdeen, Maryland
December 29, 1955

From: Subcommittee on Facilities

To: Harford Consultant Committee on Integration
Ernest H. Volkart, Chairman

I. Authority

On September 23, 1955, a subcommittee consisting of Harold Baker, Chairman, Mrs. Norman J. Schnepfe and Mr. Paul Beatly Harlan, Associate Members, was appointed to investigate and report on the various facilities at the disposal of the Board of Education of Harford County, particularly with reference to buildings, classrooms, and pertinent training aids. The subcommittee interpreted its mission to be: To establish a definite relationship between the number of classrooms available throughout the county, and the number of pupils enrolled, using as a standard the optimum figures set by qualified National and State authorities, and also, insofar as possible, to preview conditions in the school year 1956-57. (See Appendix I)

II. Activities

The subcommittees began its investigations on September 28, 1955 and concluded them on November 29, 1955. Each of the twenty-three schools was visited by one or other member of the group. Neither principals nor teachers received advance notice of intended visits, thus assuring observation of the normal routine of operations.

Duration of examinations, depending upon the size of the unit, varied from one-half hour to two hours. Attention was directed toward condition (both external and internal)

of buildings. Heating and lighting facilities were carefully noted. Cafeteria equipment and management, shops and laboratories, domestic science rooms and equipment, safety and health provisions, recreational and athletic space and equipment, locker rooms, toilets, and all other adjuncts pertinent to the comfort and well-being of teachers and students were inspected. Special attention was focused upon classrooms with a view to determining whether the number of occupants exceeded or fell short of the standard (twenty-five high school or thirty elementary students per classroom) as determined by established authority. (See Appendix II)

III. Findings

1. *Buildings (General).* In the Harford school system there are only three buildings of frame construction. These include the elementary plants at Emmorton, Perryman, and a four-room structure at Havre de Grace purchased for the use of primary pupils who could not be accommodated at Havre de Grace Elementary School. All other buildings are of brick-concrete construction, and are either new, or in such state of preservation as to warrant alteration or addition to meet the demands of increased enrollment or new activities. All buildings are in safe condition.

2. *Heating plants.* These are, in the main, adequate. Where practicable, coal-burning units are being replaced by fuel oil systems.

3. *Light.* Window area, in proportion to wall area, conforms to conventional specifications. Lighting systems are adequate; fixtures are, for the most part, advantageously located.

4. *Cafeterias.* All except two schools, Emmorton and Perryman, have some provision for cafeteria service. The

newer buildings incorporate complete, modern dining rooms, kitchens, and food-storage space and equipment. Meals are adequate, of high quality, and designed to supply the nourishment required by the growing child. In many cases, mothers of attending pupils volunteer for service in the cafeterias. In buildings in which the cafeteria was not included in the original layout, gymnasiums, auditoriums, and other adaptable rooms serve the purpose. All cafeterias are clean, orderly, and well-staffed.

5. *Domestic Science Rooms, Laboratories and Shops.* These facilities are confined to high schools and consolidated schools. Increasing interest in "do it yourself" projects, together with the already existing trend in that direction, is reflected in the increasing demand for such training. Some shop units have been added in the current year; others are in the process of construction. Additional shop space and equipment is necessary in several schools. The same may be affirmed of Domestic Science facilities.

6. *Recreation and Athletics.* All schools have made such provision for recreation and athletics as space and funds will permit. In some cases students themselves have raised funds or performed the manual labor necessary to expand athletic facilities and programs.

7. *Safety and Health.* All schools have, in such measure as space, personnel, and equipment will permit, established some system looking to the elimination of safety hazards, and to the promotion of first-aid treatment. First-aid kits, cots, stretchers, and other equipment are at hand. Where enrollment justifies such action, part-time or full-time nurses are employed.

8. *Classroom Enrollment Ratios, 1955-1956.* Data gathered through investigations of the subcommittee, supplemented by figures supplied by the Board of Education,

*Excerpts from Plaintiff's Exhibit 1-a*

indicate that during the current school year (1955-56), 7,808 elementary pupils are occupying 217 classrooms, an average of 36 per room; that 5,479 high school students are housed in 154 classrooms, an average of approximately 35.7 per room.

9. *Current Classroom Construction.* In anticipation of increased enrollment, thirty-four additional classrooms are in the process of construction, and are expected to be available for use at the beginning of the 1956-57 school year. These are located as indicated below.

| High Schools | Elementary Schools |
|---|---|
| Bel Air 16 | Halls Cross Roads 4 |
| Aberdeen 6 | Edgewood 4 |
| Edgewood 4 | |

10. *Classroom—Enrollment Ratios 1956-57.* The estimated elementary enrollment for the coming year (1956-57) is 8,290. To accommodate these pupils, 225 classrooms are available—an average of approximately 36.8 pupils per room. High school registration is expected to total 5,930 for which 188 classrooms are provided—an average of approximately 31.5 per room.

11. *Observations (General).* While the averages determined in the above paragraph exceed the figures generally conceded to be ideal, they do indicate an improvement over 1955-56 conditions especially as they apply to high schools. During the prosecution of the mission with which it was entrusted, your subcommittee has observed that while in certain cases executive and teaching personnel has been sorely taxed, the challenge has been promptly and efficiently met. Facilities have been exploited to the utmost without sacrificing any part of the educational or cultural training to which the pupil is entitled.

12. *Unused Capacities.* In Appendix IV, Column 4, it will be noted that eight schools are not expected to be filled to capacity in 1956-57. These are as follows:

*Excerpts from Plaintiff's Exhibit 1-a*

| Elementary | High |
|---|---|
| Emmorton | Aberdeen |
| Edgewood | Havre de Grace |
| Halls Cross Roads | |
| Slate Ridge | |
| Darlington | |
| Havre de Grace (special) | |

It is also apparent that these eight schools can accommodate 510 more students than they expect to receive. This condition may be attributed either to the fact that classrooms have been added or that population in certain specific areas has decreased. It should *not* be construed as affecting in any degree the averages established in Paragraph 10. What it actually indicates is an unequal distribution of pupils, since it can be seen by referring to Appendix IV, Column 3, that the seventeen schools not mentioned in Paragraph 12 will have 1,050 pupils in excess of their capacities. It also points to the fact that the schools listed in Paragraph 12 above may add to their rosters by admitting colored students residing in the area in which the school is located, or near enough to such area as to make use of existing transportation facilities. Such action would materially reduce the pressure on other schools whose facilities are sorely taxed.

IV. *Conclusions.* After carefully considering all factors at its disposal, the committee is of the opinion that provision can be made to accommodate such colored students as apply for admission to Harford County public schools for the year 1956-57.

Respectfully submitted,

Mrs. Norman J. Schneefe,
Mr. Paul Beatty Harlan,
Mr. G. Harold Baker, Chairman.